

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

H/S

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BILL DRAFT 2007-LNz-309A* [v.6] (4/2)

**(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
4/23/2008 9:33:00 AM**

Short Title: Recommendations of MH/DD/SA Oversight Comm. (Public)

Sponsors: Representative Insko./Senator Nesbitt.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ENACT VARIOUS LAWS TO IMPROVE THE MENTAL HEALTH,
DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES
SYSTEM, AS RECOMMENDED BY THE JOINT LEGISLATIVE OVERSIGHT
COMMITTEE ON MENTAL HEALTH, DEVELOPMENTAL DISABILITIES,
AND SUBSTANCE ABUSE SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1.1. Expenditure of Service Dollars. - For the purpose of mitigating cash-flow problems that many non-single-stream LMEs experience at the beginning of each fiscal year, the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall adjust the timing and method by which allocations of service dollars are distributed to each non-single-stream LME. To this end, the allocations shall be adjusted such that at the beginning of the fiscal year, the Department shall distribute not less than one-twelfth of the LME's continuation allocation and subtract the amount of the adjusted distribution from the LME's total reimbursements for the fiscal year.

SECTION 1.2. There is appropriated from the General Fund to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, the sum of six million dollars (\$6,000,000) for the 2008-2009 fiscal year. These funds shall be used to support LMEs in establishing additional regionally-purchased and locally-hosted substance abuse programs. Funds appropriated shall be for the purpose of developing and enhancing the American Society of Addiction Medicine (ASAM) continuum of care at the community level. The Department of Health and Human Services shall work with LMEs in establishing these programs.

SECTION 1.3.(a) There is appropriated from the General Fund to the Department of Health and Human Services, Division of Mental Health, Developmental

1 Disabilities, and Substance Abuse Services, the sum of six hundred seventy-five
2 thousand dollars (\$675,000) for the 2008-2009 fiscal year. These funds shall be used to
3 contract with an outside vendor for technical assistance to LMEs that are not meeting
4 the standards necessary for single-stream funding.

5 **SECTION 1.3.(b)** The Department shall encourage the conversion of the
6 remaining non-single-stream LMEs to single-stream funding as soon as possible. The
7 Department shall also develop standards for the removal of single-stream designation
8 for those LMEs that do not continue to comply with the applicable requirements for
9 single-stream funding.

10 **SECTION 1.4.** The Department of Health and Human Services shall
11 simplify the current State Integrated Payment and Reporting System (IPRS) to
12 encourage more providers to serve State-paid clients.

13 **SECTION 1.5.** The Department of Health and Human Services shall create a
14 reporting system for both single-stream funding and non-unit-cost reimbursement
15 funding that is readily comprehensible and integrates with payment systems.

16 **SECTION 1.6.** The Department of Health and Human Services shall
17 determine why there have been under- and over-expenditure of State service dollars by
18 LMEs and shall take the action necessary to address the problem. In making its
19 determination the Department shall consult with LMEs and providers. Not later than
20 January 1, 2009, the Department shall report to the House of Representatives
21 Appropriations Subcommittee on Health and Human Services, the Senate
22 Appropriations Committee on Health and Human Services, the Fiscal Research Division
23 and the Joint Legislative Oversight Committee on Mental Health, Developmental
24 Disabilities, and Substance Abuse Services on actions taken to address problem of LME
25 under- and over-expenditure of service dollars.

26 **SECTION 1.7.(a)** There is appropriated from the General Fund to the
27 General Assembly the sum of one million dollars for the 2008-2009 fiscal year. These
28 funds shall be used to retain the services of an independent consultant to perform a gap
29 analysis of the Mental Health, Developmental Disabilities, and Substance Abuse
30 Services System. In developing the RFP the Fiscal Research Division shall require the
31 Independent Consultant to report on or before May 1, 2009 its findings and
32 recommendations to the House of Representatives Appropriations Subcommittee on
33 Health and Human Services, the Senate Appropriations Committee on Health and
34 Human Services, the Joint Legislative Oversight Committee on Mental Health,
35 Developmental Disabilities, and Substance Abuse Services, and the Fiscal Research
36 Division.

37 **SECTION 1.7.(b)** In developing its work plan, the Joint Legislative Program
38 Evaluation Oversight Committee may include a thorough performance evaluation of the
39 State's mental health agencies in the Department of Health and Human Services,
40 Division of Mental Health, Developmental Disabilities, and Substance Abuse Services
41 and the Division of Medical Assistance. The performance evaluation shall be
42 completed not later than May 1, 2009.

1 **SECTION 2.1.(a). State-Operated Services.** – In order to temporarily
2 address high admissions to adult acute unit beds in the State psychiatric hospitals, the
3 Secretary of the Department of Health and Human Services may open and operate on a
4 temporary basis the Central Regional Hospital Wake Unit on the Dorothea Dix Campus
5 and may maintain the Wake Unit on the Dix Campus until beds become available in the
6 system.

7 **SECTION 2.1.(b).** G.S. 122C-181(a)(1) reads as rewritten:

8 **"§ 122C-181. Secretary's jurisdiction over State facilities.**

9 (a) Except as provided in subsection (b) of this section, the Secretary shall
10 operate the following facilities:

11 (1) Psychiatric Hospitals:

12 a. Cherry Hospital.

13 a1. **(Contingent effective date, see Editor's note)** Central
14 Regional Hospital.

15 b. **(Contingent repeal date, see Editor's note)** Dorothea Dix
16 Hospital.

17 c. **(Contingent repeal date, see Editor's note)** John Umstead
18 Hospital.

19 d. Broughton Hospital.

20 e. The Central Regional Hospital Wake Unit on the Dorothea Dix
21 Campus."

22 This subsection expires upon the earlier of July 1, 2009 or the availability of
23 beds at Central Regional Hospital.

24 **SECTION 2.1.(c)** There is appropriated from the General Fund to the
25 Department of Health and Human Services the sum of five million two hundred
26 seventy-four thousand dollars (\$5,274,000) for the 2008-2009 fiscal year. These one-
27 time funds shall be used to support the temporary opening and operation of the Central
28 Regional Hospital Wake Unit on the Dorothea Dix Campus.

29 **SECTION 2.2.(a)** G.S. 130A-383(a) reads as rewritten:

30 **"§ 130A-383. Medical examiner jurisdiction.**

31 (a) Upon the death of any person resulting from violence, poisoning, accident,
32 suicide or homicide; occurring suddenly when the deceased had been in apparent good
33 health or when unattended by a physician; occurring in a jail, prison, correctional
34 ~~institution~~institution, State facilities operated in accordance with Part 5 of Article 4 of
35 Chapter 122C of the General Statutes; or in police custody; occurring pursuant to
36 Article 19 of Chapter 15 of the General Statutes; or occurring under any suspicious,
37 unusual or unnatural circumstance, the medical examiner of the county in which the
38 body of the deceased is found shall be notified by a physician in attendance, hospital
39 employee, law-enforcement officer, funeral home employee, emergency medical
40 technician, relative or by any other person having suspicion of such a death. No person
41 shall disturb the body at the scene of such a death until authorized by the medical
42 examiner unless in the unavailability of the medical examiner it is determined by the
43 appropriate law enforcement agency that the presence of the body at the scene would
44 risk the integrity of the body or provide a hazard to the safety of others. For the limited

1 purposes of this Part, expression of opinion that death has occurred may be made by a
2 nurse, an emergency medical technician or any other competent person in the absence of
3 a physician."

4 **SECTION 2.2.(b)** G.S. 122C-31 is amended by adding the following new
5 subsection to read:

6 "**§ 122C-31. Report required upon death of client.**

7 "...

8 "(g) In addition to the reporting requirements specified in subsections (a) through
9 (e) of this section, and pursuant to G.S. 130A-383, every State facility shall report the
10 death of any client of the facility, regardless of the manner of death, to the medical
11 examiner of the county in which the body of the deceased is found."

12 **SECTION 2.2.(c)** There is appropriated from the General Fund to the
13 Department of Health and Human Services, the sum of one hundred fifty-five thousand
14 two hundred twenty-six dollars (\$155,226) for the 2008-2009 fiscal year. These funds
15 shall be used for one additional public health nurse consultant position and other costs
16 associated with the increased investigatory requirements of this section.

17 **SECTION 2.3.** There is appropriated from the General Fund to the
18 Department of Health and Human Services, Division of Mental Health, Developmental
19 Disabilities, and Substance Abuse Services, the sum of thirty million dollars
20 (\$30,000,000) for the 2008-2009 fiscal year. These funds shall be used to expand the
21 Hospital Utilization Pilot Program statewide in a manner that maintains local control of
22 funds and bed allocations, with a goal of reducing the use of State psychiatric hospital
23 beds for those individuals staying two weeks or less.

24 **SECTION 2.4.** There is appropriated from the General Fund to the
25 Department of Health and Human Services, Division of Mental Health, Developmental
26 Disabilities, and Substance Abuse Services, the sum of one million one hundred thirty-
27 four thousand one hundred sixty-eight dollars (\$1,134,168) for the 2008-2009 fiscal
28 year to implement three pilot programs of the Transitional Residential Treatment
29 Program. One pilot program shall be located in each of the State's three State
30 psychiatric hospital catchment areas.

31 **SECTION 2.5.(a)** There is appropriated from the General Fund to the
32 Housing Trust Fund the sum of ten million dollars (\$10,000,000) for the 2008-2009
33 fiscal year for the Housing 400 Initiative in order to reduce the need for State
34 psychiatric hospitals in the long-term.

35 **SECTION 2.5.(b)** There is appropriated from the General Fund to the
36 Department of Health and Human Services, Division of Mental Health, Developmental
37 Disabilities, and Substance Abuse Services, the sum of two million five hundred
38 thousand dollars (\$2,500,000) for the 2008-2009 fiscal year to continue operating
39 support for an estimated 500 units of the Housing 400 Initiative in order to reduce the
40 need for State psychiatric hospitals in the long-term. It is the intent of the General
41 Assembly that these funds shall be appropriated on a recurring basis.

42 **SECTION 2.6.** Not later than October 1, 2008, the Department of Health
43 and Human Services, Division of Medical Assistance, shall provide for automatic re-
44 enrollment of Medicaid recipients whose Medicaid eligibility had been cancelled

1 because of admission to the hospital. The purpose of automatic re-enrollment is to
2 ensure that upon release from the hospital the eligible Medicaid recipient will have
3 uninterrupted access to care and medications under the Medicaid program.

4 **SECTION 2.7.** The Department of Health and Human Services, Division of
5 Mental Health, Developmental Disabilities, and Substance Abuse Services, shall, within
6 available resources, implement the tiered CAP-MR/DD waiver program in accordance
7 with Section 10.49(dd) of S.L. 2007-323. The Department shall implement the program
8 with four tiers: (i) up to \$10,000; (ii) between \$10,001 and \$25,000; (iii) between
9 \$25,001 and 75,000; and (iv) greater than \$75,000.

10 **SECTION 2.8.** The North Carolina Institute of Medicine shall study and
11 report on the transition for persons with developmental disabilities from one life setting
12 to another, including barriers to transition and best practices in successful transitions.
13 The IOM should conduct this study using funds appropriated for IOM studies in the
14 2007 Session. The study should encompass at least the following topics: (i) the
15 transition for adolescents leaving high school, including adolescents in foster care and
16 those in other settings; (ii) the transition for persons with developmental disabilities who
17 live with aging parents; and (iii) the transition from the developmental centers to other
18 settings.

19 **SECTION 2.9.** The Department of Health and Human Services shall review
20 State-County Special Assistance rates to establish an appropriate rate for special care
21 units for persons with a mental health disability and shall review current rules pertaining
22 to special care units for persons with a mental health disability to determine if additional
23 standards are necessary. The Department shall report its findings and recommendations
24 to the House of Representatives Appropriations Subcommittee on Health and Human
25 Services, the Senate Appropriations Committee on Health and Human Services, the
26 Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities,
27 and Substance Abuse Services, and the Fiscal Research Division not later than January
28 1, 2009.

29 **SECTION 3.1 Community Services.** - In order to ensure accountability
30 for services provided and funds expended for community services, the Department of
31 Health and Human Services, Division of Mental Health, Developmental Disabilities,
32 and Substance Abuse Services, shall develop and implement a tiered rate structure to
33 replace the blended rate currently used for community support services. Under the new
34 tiered structure, services that are necessary but do not require the skill, education, or
35 knowledge of a qualified professional should not be paid at the same rate as services
36 provided by qualified skilled professionals.

37 **SECTION 3.2.** The Department of Health and Human Services, Division of
38 Mental Health, Developmental Disabilities, and Substance Abuse Services, shall
39 develop and implement a service authorization process that separates the assessment
40 function from the service delivery function at the LME level. In developing the process
41 the Department shall consider as an option separate LME assessment centers, the duties
42 of which would include care coordination.

43 **SECTION 3.3.(a).** The Department of Health and Human Services shall
44 conduct a thorough study of the service authorization, utilization review, and utilization

1 management processes and shall develop a plan to return the service authorization,
2 utilization review and utilization management functions to LMEs for all clients. Not
3 later than February 1, 2009, the Department shall report its findings and
4 recommendations to the House of Representatives Appropriations Subcommittee on
5 Health and Human Services, the Senate Appropriations Committee on Health and
6 Human Services, the Joint Legislative Oversight Committee on Mental Health,
7 Developmental Disabilities, and Substance Abuse Services, and the fiscal research
8 division. The Department shall comply with the requirements of S.L. 2007-323, Section
9 10.49(ee). The Department shall not contract with an outside vendor for service
10 authorization, utilization review, or utilization management functions, or otherwise
11 obligate the State for these functions beyond June 30, 2009. The Department shall
12 require LMEs to include in their service authorization, utilization management, and
13 utilization review a review of assessments as well as person centered plans, and random
14 or triggered audits of services and assessments.

15 **SECTION 3.3.(b).** The Department shall require that the licensed
16 professional that signs a medical order for behavioral health services must indicate on
17 the order whether the licensed professional has (i) had direct contact with the consumer,
18 and (ii) has reviewed the consumer's assessment. This requirement shall take effect no
19 later than October 1, 2008.

20 **SECTION 3.4.(a)** G.S. 150B-2(1a) reads as rewritten:

21 "(1a) 'Agency' means an agency or an officer in the executive branch of the
22 government of this State and includes the Council of State, the
23 Governor's Office, a board, a commission, a department, a division, a
24 council, and any other unit of government in the executive branch. A
25 Except as provided in G.S. 122C-115.4(b)(2), a local unit of
26 government is not an agency."

27 **SECTION 3.4.(b)** G.S. 122C-115.4(b)(2) reads as rewritten:

28 "(b) The primary functions of an LME are designated in this subsection and shall
29 not be conducted by any other entity unless an LME voluntarily enters into a contract
30 with that entity under subsection (c) of this section. The primary functions include all of
31 the following:

32 ...

33 (2) Provider endorsement, monitoring, technical assistance, capacity
34 development, and quality control. An LME may remove a provider's
35 endorsement if a provider fails to meet defined quality criteria, fails to
36 adequately document the provision of services, fails to provide
37 required staff training, or fails to provide required data to the LME.
38 Notwithstanding any other provision of law to the contrary, when an
39 LME acts on provider endorsements the LME is acting as an agent of
40 the State."

41 **SECTION 3.4.(c)** The Department of Health and Human Services shall
42 adopt guidelines for LME periodic review and re-endorsement of providers to ensure
43 that only qualified providers are endorsed and that LMEs hold those providers
44 accountable for the Medicaid and State-funded services they provide.

SECTION 3.5.(a) Effective October 1, 2008, the Title of G.S. 108A-79 reads as rewritten:

"§ 108A-79. Appeals.~~Appeals of county level decisions.~~"

SECTION 3.5.(b). Effective October 1, 2008, Article 4 of Chapter 108A of the General Statutes is amended by adding the following new section to read:

"§ 108A-79.1. Appeals by Medicaid applicants and recipients.

(a) An action by the Department to deny, terminate, suspend, or reduce Medicaid eligibility, or to deny, terminate, suspend, or reduce Medicaid services is a "contested case" subject to the provisions of Chapter 150B of the General Statutes, except as provided by this section. At the time of providing the notice required under subsection (b) of this section, the Department shall file a petition with the Office of Administrative Hearings to determine the Medicaid applicant's or recipient's rights duties or privileges.

(b) In addition to the notice requirements of G.S. 150B-23, the Department shall provide within 30 days of its decision written notice to the aggrieved applicant or recipient, or the applicant's or recipient's legal guardian, which notice shall include:

- (1) An explanation of the Department's decision.
- (2) A clear and concise statement of what service is being reduced, terminated, or denied and the basis upon which the decision was made.
- (3) A statement that the Department has filed a petition for administrative review of its decision on behalf of the applicant or recipient, and that the applicant or recipient has 30 days from the date of the Department's decision to decide whether or not to proceed with the hearing.
- (4) A clear explanation of how the hearing will proceed, what is required of the applicant in order to proceed or to decline to proceed, and that the applicant or recipient may be represented by an attorney at the hearing.
- (5) A statement that the recipient will continue to receive Medicaid services at the level provided on the day immediately preceding the Department's decision pending a final decision.
- (6) The telephone number of a contact person at the Department to respond in a timely fashion to applicant or recipient questions.
- (7) A brochure supplied by the North Carolina Protection and Advocacy System that explains the rights of applicants and recipients under the State Medical Assistance Program, including the rights to appeal decisions of the Department."

SECTION 3.6. The Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall study Medicaid waivers, including 1915(b) and (c) waivers, for all LMEs. In cases where Medicaid waivers are not appropriate for all LMEs, the Department shall identify and recommend strategies to increase LME flexibility for innovation. Not later than March 1, 2009, the Department shall report its findings and recommendations to the House of Representatives Appropriations Subcommittee on Health and Human Services, the

1 Senate Appropriations Committee on Health and Human Services, the Joint Legislative
2 Oversight Committee on Mental Health, Developmental Disabilities, and Substance
3 Abuse Services, and the fiscal research division.

4 **SECTION 4.1.(a)** The Secretary of the Department of Health and Human
5 Services shall develop a detailed plan for General Assembly review on its
6 recommendation to merge, consolidate or establish regional arrangements of LMEs. In
7 developing the plan the Secretary shall consult with LMEs to obtain input on the
8 feasibility and effectiveness of potential mergers, and the time frame needed to fully
9 implement the mergers at the local level. The Secretary shall provide the plan to the
10 House of Representatives Appropriations Subcommittee on Health and Human
11 Services, the Senate Appropriations Committee on Health and Human Services, the
12 Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities,
13 and Substance Abuse Services, and the Fiscal Research Division not later than July 1,
14 2009.

15 **SECTION 4.1.(b)** The Secretary of the Department of Health and Human
16 Services shall not take any action prior to January 1, 2009 that would result in the
17 merger or consolidation of LMEs operating on January 1, 2008 or that would establish
18 consortia or regional arrangements for the same purpose, except that LMEs that do not
19 meet the catchment area requirements of G.S. 122C-115 as of January 1, 2008, may
20 initiate, continue, or implement the LMEs' merger or consolidation plans to overcome
21 noncompliance with G.S. 122C-115.

22 **SECTION 5. Effective date.** - This act becomes effective July 1, 2008.